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Directive 99-10: Automobile Repainting

Introduction

This Directive discusses the sales and use tax consequences of several different billing methods that may be used by Service Enterprises engaged in auto repainting. This Directive revokes Letter Ruling 96-4 to the extent that the ruling is inconsistent with DD 99-10. It has come to the attention of the Department that LR 96-4 may have been construed such that it had the unintended effect of appearing to call for a billing practice in auto repainting service contracts which resulted in double taxation of materials consumed. The intent of the sales and use tax statutes and the Service Enterprises Regulation, 830 CMR 64H.1.1, is to avoid such a result.

Billing Method 1:

An auto body repairer issues a bill to its retail customer for auto repainting that does not separately state charges for labor and materials. [\(1\)](#)

Directive 1:

An auto body repairer performing the service transaction of automobile repainting that elects not to separately state charges for labor and materials must collect tax on the entire sales price to the retail customer [\(2\)](#), unless the value of the materials transferred to the retail customer is inconsequential, i.e., valued at less than 10% of the total charge from the vendor to the retail customer. Items consumed by a service enterprise vendor in the repainting process, e.g., masking paper, tape, sandpaper, paint brushes, and squeegees, are subject to the sales or use tax when purchased or used by the vendor.

Billing Method 2:

An auto body repairer wishes to separately state charges for labor and materials to its retail customers in the service transaction of auto repainting.

Directive 2:

An auto body repairer performing the service transaction of automobile repainting may separately state the charges for materials on its bill to the retail customer. If the auto body repairer does so, the separately stated charge for materials may include only the fair retail selling price of the tangible personal property that is actually incorporated into the vehicle and thereby transferred to the retail customer, e.g., paint, hardener, body-filler and clear coat. The auto body repairer must collect tax on the separately stated charges for those materials.

Items consumed by a service enterprise vendor in the repainting process, e.g., masking paper, tape, sandpaper, paint brushes, and squeegees, may not be included in the separately stated charge for materials. These items are subject to the sales or use tax when purchased or used by the vendor.

Billing Method 2:

An auto body repairer wishes, for insurance reimbursement or other billing purposes, to separately state charges for labor, materials transferred to the retail customer, and materials consumed in the automobile repainting process.

Directive 3:

An auto body repairer performing the service transaction of automobile repainting may separately state the charges for materials on the bill to the customer. If the auto body repairer does so, the separately stated charge for materials subject to tax may include only the fair retail selling price [\(3\)](#) of the tangible personal property that is actually incorporated into the vehicle and thereby transferred

to the retail customer. The auto body repairer may, but is not required to, also separately state a charge for materials that are consumed in the repainting process. Neither the charges for labor nor materials consumed in the repainting process are subject to tax when billed to the retail customer; materials consumed in the repainting process are subject to sales or use tax when purchased or used by the body shop. If the charge for materials consumed in the repainting process is separately stated on the bill to the retail customer, the bill must also contain a statement that all applicable Massachusetts tax on those materials has been paid by the auto body repairer.

Discussion

1. Service Transactions

Automobile repair is a service transaction within the meaning of the Service Enterprises Regulation, 830 CMR 64H.1.1. See 830 CMR 64H.1.1(2). Under the Regulation, where a service transaction does not involve the transfer of any tangible personal property, the service provider is not required to collect the sales tax on the amount it charges its customer. Rather, the service provider must pay the sales tax when it purchases tangible personal property that it will use or consume in providing the service.

Where a service transaction does involve a transfer of tangible personal property, the sales tax treatment of the transaction depends on (i) whether the property transferred is a consequential element of the transaction and (ii) whether the service provider separately states the charge for the tangible personal property on the bill to the customer. The Regulation provides a guideline to determine whether the tangible personal property component of a service transaction is inconsequential. Under that guideline, the term inconsequential "means a value of less than ten percent of the total charge" to the customer. 830 CMR 64H.1.1(1).

2. Transactions Involving a Consequential Transfer of Tangible Personal Property Under the Service Enterprises Regulation, where a repairer, as part of a repair service, transfers parts or materials to a customer, and the value of such tangible personal property is "not inconsequential," the sales or use tax applies. 830 CMR 64H.1.1(5)(a). The sales or use tax is based on the entire charge to the customer, unless the repairer, in its customer invoices and in its records, separately states the fair retail selling price of the tangible personal property. Id. If the repairer does separately state the fair retail selling price of the tangible personal property, then the sales or use tax is imposed only on that price, and not the amount charged for labor. Id.; see also Letter Rulings 82-22 and 85-8.

3. Transactions Involving an Inconsequential Transfer of Tangible Personal Property

In contrast, where a repairer, as part of a repair service, transfers parts and materials to a customer, and the value of such tangible personal property is inconsequential, the repair service is not subject to the sales tax unless the repairer charges the customer separately for the property. 830 CMR 64H.1.1(5)(a); Letter Ruling 81-93. If the repairer, in its customer invoices and in its records, separately states the fair retail selling price of the tangible personal property, then the sales or use tax is imposed on the sales price of the property, and not on the amount charged for labor. Id. If the repairer does not separately state the charge for the tangible personal property, then the entire repair service is considered a service transaction and is not subject to the sales tax. [\(4\)](#)

4. Presentation of Resale Certificates by Service Providers

Generally, where a transfer of tangible personal property by a service provider is subject to the sales tax under the Service Enterprises Regulation, the service provider is not required to pay the sales tax when it purchases the property that is transferred. See 830 CMR 64H.1.1(4), (5). Rather, the service provider may present a resale certificate when purchasing such tangible personal property. Id. In general, a service provider purchases tangible personal property for resale only if the property is actually sold to a customer in a transaction that is treated as a sale of tangible personal property under the Regulation. See G.L. c 64H, § 1 (definitions of "sale" and "selling" and "sale at retail" or "retail sale"). Thus, a service provider may present a resale certificate when purchasing tangible personal property that will be transferred to a customer in a service transaction (i) where there is a consequential transfer of tangible personal property to a customer, regardless of whether the charge for the property is separately stated and (ii) where there is an inconsequential transfer of tangible personal property to the customer and the charge for the property is separately stated. A service provider may not present a resale certificate (i) when purchasing tangible personal property that will not be transferred to a customer or (ii) when purchasing tangible personal property that will be transferred to a customer in a service transaction where there is an inconsequential transfer of tangible personal property to the customer and the charge for the property is not separately stated.

5. Payment of the Sales Tax by Automobile Repairers

An automobile body repairer need not pay the sales tax when it purchases tangible personal property that it will resell in the regular course of its business. Thus, an automobile repairer may

present a resale certificate when it purchases items that it will ultimately transfer to its customers for a separately stated charge. Such items include paint, hardener, body-filler and clear coat and other items that become affixed to the customers' automobiles. However, the automobile repairer must pay the sales or use tax when it purchases items that it will use itself in performing the repair service, unless an exemption applies. See 830 CMR 64H.1.1(2); Letter Ruling 83-35. This is so whether or not the automobile repairer recoups the cost of the items by charging its customers for them. Such items are not resold to the customers because the customers do not enter into the repair transaction with an intent to obtain the items and, in fact, do not take title to or possession of the items. In addition, these items (i) do not become ingredient and component parts of tangible personal property to be sold and (ii) are not used or consumed directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. Letter Ruling 83-35. Thus, the sales tax exemptions afforded by G.L. c. 64H, §§ 6(r) and 6(s) do not apply.

6. Abatements

The Department will apply the policy announced in this directive to all open tax periods, whether or not an assessment has been made. Vendors who have collected and remitted tax that would not have been due under this Directive may file for an abatement within the time periods sets forth in 830 CMR 62C.37.1(2), provided that (i) the bills to their retail customers meet the requirements of DD 99-10; (ii) the vendor can substantiate that it paid sales or use tax on materials consumed in the repainting service; and (iii) the vendor can substantiate that it has repaid or credited to any purchaser who has paid the tax to the vendor the amount for which the application is made in accordance with 830 CMR 62C.37.1(5).

Frederick A. Laskey
Commissioner of Revenue

DD 99-10

Notes:

1. When an insurer will be paying for the cost of repairs to a motor vehicle insured in the Commonwealth, use of this billing method may be precluded by Regulations of the Division of Insurance. See generally 211 CMR 133.01 and 212 CMR 2.04(1)(e). ([return to text](#))
2. If the value of the paint and other materials transferred to the retail customer is inconsequential and not separately stated, then the service enterprise must remit sales or use tax on these items when they are purchased or consumed. In that case, the body shop's charges to the retail customer are not subject to tax. See LR 81-90. ([return to text](#))
3. The fair retail selling price includes the entire amount the auto body repairer paid for the materials plus any markup that it charges its customer for those materials. ([return to text](#))
4. Under these circumstances, the repairer is considered the consumer of all tangible personal property used in performing the service, including tangible personal property ultimately transferred to the customer. 830 CMR 64H.1.1(5)(a); Letter Rulings 82-22 and 81-93. The repairer must pay the sales or use tax when it purchases these items. Id. ([return to text](#))